## Serious Racial and Religious Vilification in Victoria under the Criminal Law

The offences of serious racial and religious vilification involve intentional incitement to threaten or incite others to threaten physical harm or intentionally inciting serious contempt for or revulsion or severe ridicule of, that other person or class of persons: *Racial and Religious Tolerance Act 2001* (Vic) ss 24 and 25

The key elements are:

On the ground of race or religious belief or activity of another person or class of persons	(1) Intentionally engaging in conduct that the offender knows is likely	To incite hatred against that other person or class of persons	AND to threaten, or incite others to threaten physical harm	OR (2) knowingly engage in conduct with the intention of inciting	Serious contempt for, or revulsion or severe ridicule of	Other person or class of persons
In <i>Cottrell<sup>i</sup></i> , it was	Section 24(1)	If the likely effect	The effect of this	In <i>Cottrell,</i> it was	In <i>Cottrell,</i> Kid CJ	'Class' is not
held that as the	provides that it is	of a person's	element is to	held that intent	held that	defined in the RRT
element 'on the	necessary for the	conduct is 'hatred'	require some	under s 25(2)	the words 'serious	Act. The natural or
ground of the	prosecution to prove	then a prosecution	additional	requires that the	contempt for, or	ordinary meaning
religious belief or	that the defendant	would have to be	aggravating	perpetrator	revulsion or	of the phrase is
activity of the	intended to incite	brought under s	conduct, i.e	intended to	severe ridicule of'	that of a
person or class of	others to have the	24(1) or s 25(1)	threatening or else	encourage the	should be given	'collection or
persons' is	responses and to	and the conduct	inciting others to	audience to be	their natural and	group of persons
referrable to the	carry out the threats	must include	threaten physical	moved by his	ordinary	who are regarded
impact on the	referred to." <sup>ix</sup>	threats or	harm. <sup>xxii</sup> "It seems	conduct to serious	meaning. <sup>xxxvii</sup>	as having certain
mind of the		incitement of	clear, by	contempt (or	These words and	common
audience under s	It is not necessarily	others to	application of the	other relevant	phrases "describe	attributes or
8, the same phrase	the view point of the	threaten. <sup>xv</sup>	general rules of	emotion) by	the strongest	traits.' <sup>xliv</sup>
under s 25(2)	offender that creates		law concerning	reason of the	possible (or	
should be	a criminal offence,	The word 'incites'	the elements of	religious beliefs of	extreme) feelings	The RRT Act
referrable to the	but whether what the	should be	criminal offences,		of dislike". <sup>xxxviii</sup> The	contemplates that

intended impact	offender said incited	interpreted in	that it is necessary	the victim	criminal offence is	a class of persons
on the mind of the	or caused others to	accordance with	for the	group. <sup>xxiv</sup>	'specified to apply	may hold a
audience. <sup>ii</sup>	commit or threaten	its plain and	prosecution to		only to the most	religious belief or
	acts of violence	ordinary meaning	prove that the	He held the	extreme	engage in religious
Intent under s	against the victim and	– to urge, spur on,	defendant	absence of an	behaviour'	activity.
25(2) requires that	that the offender	stir up, animate or	intended to incite	equivalent	intended to cause	
the perpetrator	intended this to be	stimulate. <sup>xvi</sup> It	others to have the	provision to s 9,	those extreme	Muslims are
intended to	the outcome. <sup>x</sup>	carries the	responses and to	which provides	feelings. <sup>xxxix</sup>	clearly a group of
encourage the		connotation of	carry out the	that motive is		people having an
audience to be		'inflame' or set	threats referred	irrelevant to civil	"Importantly,	attribute in
moved by his	The parallel NSW	alight'. <sup>xvii</sup>	to." <sup>xxiii</sup>	liability under the	contempt is	common, that is,
conduct to serious	provision, s 20D of			RRT Act, tends to	preceded by the	people who follow
contempt (or	the Anti-			show that motive	qualifying words	or practice the
other relevant	Discrimination Act	The term 'hatred',		is relevant to	'serious' and	religion of Islam;
emotion) <b>by</b>	1977 (NSW) has been	should be		liability under s	ridicule is	they hold religious
reason of the	repealed.	interpreted in		25(2). Motive	preceded by the	beliefs and engage
religious beliefs of	The NSW Standing	accordance with		does not require	word 'severe'.	in religious
the victim group."	Committee on Law	tits ordinary		proof that the	Unlike the	activity. <sup>xiv</sup>
	and Justice's Report	meaning. <sup>xviii</sup>		accused did	emotional	
Kidd CJ stated:	on Racial Vilification			possess actual	response of	
"It seems to me	Law in NSW, <sup>xi</sup>			personal feelings	'ridicule' and	
that once it is	considered some	The vilification		of malevolence	'contempt', there	
established that	concerns "regarding	provisions are		or animus towards	is no modifier for	
the perpetrator	the necessary mental	directed at		the victim group	the emotion	
intended to	state, or 'mens rea',	conduct that is		or their beliefs. <sup>xxv</sup>	'revulsion'. It	
encourage the	required when	likely to 'generate		However,	seems to me that	
audience to be	proving incitement".	strong and		sentiments such as	this recognises	
moved by his		negative passions		these will	that the severity	
conduct to serious	The NSW Standing	in the ordinary		'almost always	or level of feelings	
contempt (or	Committee stated:	person', such as		accompany the	of 'ridicule' or	
other relevant	"We	where persons are		requisite intention	'contempt' might	
emotion) by	acknowledge	so affected that		under s 25(2))'. <sup>xxvi</sup>	vary, from slight to	
reason of the	that the				extreme. The	

the victim group, it almost inevitablyGeneral in his Secondresult.**whether the accused 'set out or was moved to act as he did because also so moved or actuated to engage in the conduct by reason of the religiouswhether the accused 'set out or as he did because of the religious beliefs of the wordia or titim group."'revulsion' is different. By its very nature, 'revulsion' is already an eatready	religious beliefs of	Attorney	violence may	The question is	emotion of	
almost nevitably follows that the perpetrator was also so moved or actuated to engage in the considered of the religious beliefs of the victim group. <sup>1v</sup> Second Reading Speech thataccused 'set out or was moved to act of the religious beliefs of the victim group, <sup>1v</sup> different. By its very nature, revulsion' is able to of the religious of the religious intentional. beliefs of the wictim group. <sup>1v</sup> different. By its very nature, revulsion' is able to of the class to which it is which it is directed, taking intent to reason of the religious beliefs of to act as he did by intent to reason of the religious beliefs of to act as he did by intent to reason of the religious beliefs of to act as he did by intent to religious beliefs of to act as he did by intent to religious beliefs of husims. There which the conduct opses a ignificant between his hurdle to prosecutions under s 20D." <sup>xill</sup> Second to act as he difficant the hurdle to prosecutions under s 20D." <sup>xill</sup> Second to act as he difficant hurdle to prosecutions under s 20D." <sup>xill</sup> difficant to act as he difficant hurdle to prosecutions under s 20D." <sup>xill</sup> difficant to act as he difficant hurdle to prosecutions under s 20D." <sup>xill</sup> accused 'set out or corns. <sup>xill</sup> difficant the corns. <sup>xill</sup> addition to incite intention to incite intention to incite and his attitudeSecond to act as he intent to to act as he did by intent to intent to to act as he did by intent to to act as he did by intent to to act as he did by intent to to act as he difficant hurdle	J. J	-				
follows that the perpetrator was also so moved or actuated to engage in the conduct by reason of the religious beliefs of the victim group. <sup>1V</sup> Reading Speech considered incitement should be 'ordinary' member of the religious beliefs of the which it is directed, taking into account the circumstances in which it is directed, taking into account the circumstances in which it is directed, taking into account the circumstances in which the conduct of as a causal connectionwas moved to act as he did by consider the effect of the religious beliefs of the which it is directed, taking into account the circumstances in which the conduct occurs.**was moved to act as he did by causal link is crusal link is cr			result.			
perpetrator was also so moved or actuated to engage in the conduct by reason of the religious beliefs of the witcim group. <sup>1V</sup> Speech that incitement conduct on an ordinary' member of the class to which it is directed, taking into account the circumstances in weidence to act as he did by intent to reason of the religious beliefs of the stakeholders to act as he did by intent to intent to to act as he did by intent to reason of the religious beliefs of to act as he did by intent to reason of the connectionSpeech that proving occurs. <sup>3X</sup> It is necessary to conduct the circumstances in which the conduct the conduct the conduct incites' for the purposes of the engaging in the connectionIt is necessary to conduct time to act as he did by incite is to act as he did by incite is to act as he did by incite is connectionIt is necessary to conduct time to act as he did by incite is to act as he did by incite is to act as he did by incite is connectionIt is necessary to consection to act as he did by incite is to act as he did by incites' for the purposes of the religious beliefs of upurposes of the ganging in the consecutions uoder s 200."***It is necessary to conduct incites' for the purposes of the religious difficult and prosecutions to act as he did by intent to and his attitudeIt is necessary to the conduct incites' for the purposes of the religious beliefs of to act as he did by incites' for the purpose					•	
also so moved or actuated to engage in the conduct by reason of the religious beliefs of the victim group."considered thatconsider the effect of the words or conduct on an 'ordinary' member of the class to which it is directed, taking into account the circumstances in which the conduct occurs*of the religious beliefs of the causal link is crucial*already an extreme form of emotional causal link is crucial*In Cottrell the appellant set out to act as he did by intent to reason of the connectionHowever we also note the evidence from into account the circumstances in which the conduct occurs*In the present case, the appellant set out to act as he did by reason of the religious beliefs of the religious beliefs of difficult and was a causal connectionContempt is defined in the New ShorterMuslims. There engaging in the connectionTo determine whether conduct 'noites' for the purposes of the RTA, the conduct must be assessed 'as a whole'diTo determine was a causal connectionMuslims. There was a causal connectionAltion of scorning or despising; the was a causal connectionguestion (with the guestion (with the and his attitudeThere wereTo the purpose of the reason of the recite is as a whole'diNoter the religious beliefs of the religious t		-	It is possessive to			
actuated to engage in the conduct by reason of the religious beliefs of the victim group. <sup>IV</sup> that incitement should be intentional. However we which it is directed, taking into account the circumstances in which the conduct occurs. <sup>ax</sup> beliefs of the victim group'; the causal link is crucial. <sup>axviii</sup> extreme form of emotional response". <sup>sl</sup> In Cottrell the appellant set out to act as he did by intent to reason of the religious beliefs of appellant set out to act as he did by intent to religious beliefs of the victim group. <sup>IV</sup> of the words or conduct on an 'ordinary' member of the class to which it is directed, taking into account the circumstances in which the conduct occurs. <sup>ax</sup> In the present case, the appellant set out to act as he did by reason of Dictionary, Oxford Dictionary, Oxford Dictionary, Oxford University PressIn Cottrell the as a causal connectionthat proving incite is significant hurdle to engaging in the Question (with the 20D." <sup>xili</sup> To determine whether conduct 'incites' for the purposes of the RRTA, the conduct 'as a whole'. <sup>xil</sup> To determine which sesses conduct in (as a whole'. <sup>xili</sup> )mental attitude in wents and the considered as which something or someone is considered as worthess or of intention to incite) and his attitudeThere werewhich is the conduct 'interes' for the purposes of the and his attitudeconsidered as which something or someone is considered as which something and Kidd CJ didconsidered as being heldand his attitude and his attitudeThere wereThere were <t< td=""><td></td><td>•</td><td>•</td><td></td><td></td><td></td></t<>		•	•			
engage in the conduct by reason of the religious beliefs of the victim group. <sup>IV</sup> incitement should be intentional. However we also note the evidence from to act as he did by reason of the incite is religious beliefs of to act as he did by reason of the incite is religious beliefs of hudle to engaging in the connectionconduct on an 'ordinary' member of the class to which it is directed, taking into account the circumstances in which the conduct occurs. **victim group'; the causal link is crucial.***emotional response".*IIn Cottrell the appellant set out to act as he did by reason of the religious beliefs of between his engaging in the connectionconterthe stakeholders incite is significant hurdle to prosecutions under s 200."**context on an 'ordinary' member of the class to which it is dificult and poses a significant hurdle to engaging in the 200."**conduct on an 'ordinary' member of the class to which the conduct occurs. **vice asset out case, the appellant set out to act as he did by reason of beliefs of Muslims.**Contempt is defined in the New ShorterMuslims. There engaging in the connectiongingificant hurdle to prosecutions under s ad whole'.***To determine which the conduct 'notice' for the purposes of the RRTA, the conduct must be assessed 'as a whole'.***vice asset asset asset out to act as the dificult and prosecutions under s and his attitudethe condition of the conduct intention to incite) and his attitudethe conduct on an 'ordinary' member conduct in and kidd CJ didthe				•	•	
Conduct by reason of the religious beliefs of the victim group. <sup>iv</sup> Should be intentional. However we also note the evidence from'ordinary' member of the class to which it is directed, taking into account the circumstances in which the conduct occurs.**In the present causal link is crucial.***Tesponse".*IIn Cottrell the appellant set out to act as he did by metason of the religious beliefs of Muslims. There which the connectionIn the present set out to act as he did by reason of occurs.**In the present conduct the circumstances in which the conduct occurs.**In the present conduct the case, the appellant defined in the case, the appellant did by reason of University PressIn Cottrell the appellant set out to act as he did by reason of the religious beliefs of Muslims. There which te onduct must be assessed connectionTo determine which the conduct 'not determine whether conduct 'incites' for the purposes of the RTA, the conduct 'as a whole'. **ilIn the present conduct in the religious beliefs of Muslims.*****Contempt is content is the religious beliefs of Muslims.************************************						
of the religious beliefs of the victim group."intentional. However we also note the evidence fromof the class to which it is directed, taking into account the circumstances in which the conduct occurs."crucial. xxviiIn <i>Cottrell</i> the appellant set out to act as he did by reason of the religious beliefs of Muslims. There between his engaging in the connectionof the class to which it is directed, taking into account the circumstances in which the conduct occurs."In the present case, the appellant set out to act as he did by reason of beliefs of Muslims. There whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'xviIn the present case, the appellant set out to act as he beliefs of Muslims.xviii mental attitude in which set out to act as he did by incite is reason of the reason of the religious beliefs of engaging in the connectionTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct 'is a whole'xviMuslims.xviii mental attitude in which something or someone is conduct in or someone is conduct in and his attitudeof the class to difficult and 'is a whole'xvimental attitude intention to incite) and his attitudeand his attitudeThere wereThere wereand Kidd CJ didbeing held						
beliefs of the victim group. <sup>iv</sup> However we also note the evidence fromwhich it is directed, taking into account the circumstances in which the conduct occurs. <sup>xx</sup> In the present case, the appellant defined in the set out to act as he did by reason of Dictionary, Oxford Dictionary, Oxford beliefs of University PressIn Cottrell the appellant set out to act as he did by reason of the religious beliefs of was a causal connectionTo determine whether conduct 'incites' for the purposes of the RTA, the conduct 'fincites' for the purposes of the RTA, the conduct 'as a whole'.xilIn the present case, the appellant set out to act as he beliefs of University Presswas a causal connectionposes a significant hurdle to under s 20D."xilTo determine whether conduct 'incites' for the purposes of the RTA, the conduct 'as a whole'.xilIn the present connectionContempt is defined in the set out to act as he New Shorter University Press Muslims. There (1993) as: 1 The engaging in the connectionbetween his engaging in the question (with the and his attitudeposes a prosecutions under s 20D."xilTo determine whole'.xiland his attitudeThere wereThere werewhole'.xiland his attitudeand his attitudeThere wereThere werewhole'.xil	•		-		response". <sup>xi</sup>	
victim group. <sup>IV</sup> also note the evidence fromdirected, taking into account the circumstances in which the conduct occurs. <sup>XX</sup> In the present case, the appellant set out to act as he did by reason of the religious beliefs ofContempt is defined in the New ShorterIn Cottrell the appellant set out to act as he did by reason of the religious beliefs of was a causal connectionTo determine whether conduct 'incites' for the purposes of the significant hurdle to prosecutions under s conduct in question (with the 20D."XilTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'. XilIn the present case, the appellant set out to act as he did by reason of University Press (1993) as: 1 The action of scorning or despising; the mental attitude in which something or someone is conduct in and his attitudeIn Cottrell the and his attitudeThere wereTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'. XilIn the present conduct in or someone is conduct in and his attitudeContempt is defined in the New Shorter Oxford English Dictionary, Oxford University Press mental attitude in who the conduct must be assessed 'as a whole'. XilIntention to incite) and his attitudeThere wereThere wereIntention to incite) and his attitudeThere wereThe condition of being held	-	intentional.		crucial. <sup>xxvii</sup>		
evidence frominto account the circumstances in which the conductcase, the appellant set out to act as he did by reason of the religious beliefs ofdefined in the New ShorterIn Cottrell the appellant set out to act as he did by reason of the religious beliefs of Muslims. There entigious beliefs of connectionintent to incite is extremely difficult and poses a significant hurdle to engaging in the conduct inTo determine whether conduct 'incites' for the purposes of the RTA, the conduct 'as a whole'.xviCase, the appellant set out to act as he did by reason of the religious beliefs of Muslims. There was a causal connectionTo determine whether conduct 'incites' for the purposes of the RTA, the conduct 'must be assessed' 'as a whole'.xviCase, the appellant set out to act as he did by reason of Muslims. There was a causal engaging in the conduct in under s 200."xviiTo determine whether conduct 'incites' for the purposes of the RTA, the conduct 'as a whole'.xviCase, the appellant set out to act as he did by reason of Muslims. There was a causal engaging in the conduct in and his attitudeCase, the appellant between his engaging in the and his attitudedefined in the New Shorter Oxford English Dictionary, Oxford University Press or despising; the whether conduct 'incites' for the purposes of the RTA, the conduct intention to incite) and his attitudedefined in the New Shorter Oxford English Dictionary, Oxford University Press or despising; the which something or someone is conduct in and his attitudeIntention to incite) and h		However we				
fromcircumstances inset out to act as heNew ShorterIn Cottrell thestakeholderswhich the conductset out to act as heNew Shorterappellant set outthat provingoccurs.*Xdid by reason ofOxford Englishto act as he did byintent tooccurs.*Xbeliefs ofUniversity Pressreason of theincite isTo determinewhether conductMuslims.*xviii There(1993) as: 1 Thewas a causalposes apurposes of thepurposes of theconnectionor despising; thebetween hishurdle tomust be assessedconduct inor someone isengaging in theprosecutions'as a whole'.**iquestion (with theconsidered asquestion (with the20D.**ii'as a whole'.**iand his attitudeIttel account. 2and his attitudeThere wereThere wereand Kidd CJ didbeing held	victim group. <sup>iv</sup>	also note the		In the present	Contempt is	
In Cottrell the appellant set out to act as he did by reason of the religious beliefs of muslims. Therewhich the conduct occurs. XXdid by reason of the religious beliefs of Muslims. ThereOxford English University PressMuslims. There was a causal connectionTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'. XXITo determine was a causal connectionTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'. XXITo determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'. XXIThe conduct must be assessed 'as a whole'. XXIquestion (with the intention to incite) and his attitudeThere wereThere wereThere wereThere wereThere wereThere were		evidence		case, the appellant	defined in the	
appellant set out to act as he did by to act as he did by reason of the religious beliefs of Muslims. There of difficult and between his engaging in the connectionoccurs. XXthe religious beliefs of mether conduct (incites' for the purposes of the RRTA, the conduct must be assessed (as a whole'.xxiDictionary, Oxford University Press (1993) as: 1 The action of scorning or despising; the mental attitude in which something or someone is conduct in question (with the intention to incite) and his attitudeTo determine whether conduct (incites' for the purposes of the RRTA, the conduct (as a whole'.xxiDictionary, Oxford University Press (1993) as: 1 The or despising; the mental attitude in which something or someone is conduct in (intention to incite) and his attitudeDictionary, Oxford University Press (1993) as: 1 The whether conduct (incites' for the purposes of the RRTA, the conduct must be assessed (as a whole'.xxiDictionary, Oxford University Press (incites' for the purposes of the engaging in the conduct in or someone is conduct in or someone is conduct in intention to incite) and his attitudeDictionary, Oxford University Press (incites' for the purposes of the RRTA, the conduct must be assessed (as a whole'.xxiDictionary, Oxford University Press (incites' for the purposes of the engaging in the intention to incite) and his attitudeDictionary, Oxford University Press (incites' for the purposes of the engaging in the intention to incite)and his attitudeThere wereand his attitudeIttle account, 2 towards Muslims and Kidd CJ did		from		set out to act as he	New Shorter	
to act as he did by reason of the religious beliefs of was a causal connectionTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'.xxiTo determine was a causal connectionUniversity Press (1993) as: 1 The action of scorning or despising; the purposes of the engaging in the conduct in under s question (with the intention to incite) and his attitudeTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct 'as a whole'.xxiMuslims.xxviii There was a causal connectionUniversity Press (1993) as: 1 The action of scorning or despising; the between his engaging in the conduct in under s question (with the intention to incite)To determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'.xxiMuslims.xxviii There was a causal conduct in question (with the intention to incite)To determine was a causal connectionTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'.xxiMuslims.xxviii the conduct in and his attitudeUniversity Press (1993) as: 1 The conscience or despising; the purposes of the RRTA, the conduct must be assessed 'as a whole'.xxiTo determine whether conduct 'incites' for the purposes of the reageing in the intention to incite)To determine which something conduct in and his attitudeTo determine upposeTo determine whether conduct 'incites' for the purposes of the reageing in the under s and his attitudeThe condition of 	In <i>Cottrell</i> the	stakeholders		did by reason of	Oxford English	
reason of the religious beliefs of Muslims. Thereincite is extremely difficult and poses a significant hurdle to engaging in the conduct in under s question (with the and his attitudeTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct 'as a whole'.'xiiMuslims. xxviii There was a causal connection(1993) as: 1 The action of scorning or despising; the mental attitude in engaging in the conduct inreadedposes a significant hurdle to engaging in the conduct inTo determine whether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'.'xiiMuslims. xxviii There was a causal connection(1993) as: 1 The action of scorning or despising; the mental attitude in engaging in the conduct in or someone is question (with the 20D."xiiand his attitudeThere wereThere wereThere wereIttle account. 2 towards Muslims and Kidd CJ did	appellant set out	that proving	occurs. <sup>xx</sup>	the religious	Dictionary, Oxford	
religious beliefs of Muslims. Thereextremely difficult and poses a significant hurdle to engaging in the conduct inwas a causal poses of the RRTA, the conduct must be assessed <b>'as a whole'</b> . xxiwas a causal conduct inaction of scorning or despising; the between hisunder s question (with the intention to incite) and his attitudepowerewhether conduct <b>'incites'</b> for the purposes of the RRTA, the conduct <b>'as a whole'</b> . xxiwas a causal conduct in question (with the and his attitudeaction of scorning or despising; the engaging in the which something conduct in intention to incite)and his attitudeThere wereItelermine whether conduct <b>'incites'</b> for the purposes of the RRTA, the conduct <b>'as a whole'</b> . xxiwas a causal conduct in or someone is intention to incite)and his attitudeThere wereItelermine whether conduct <b>'incites'</b> for the purposes of the RRTA, the conduct <b>'as a whole'</b> . xxiwas a causal conduct in or someone is intention to incite)and his attitudeThere wereItelermine purposes of the must be assessed <b>'as a whole'</b> . xxiwas a causal conduct in and his attitudeaction of scorning or despising; the purpose or someone is intention to incite)and his attitudeThere wereItelermine purpose and Kidd CJ didbeing held	to act as he <b>did by</b>	intent to		beliefs of	University Press	
religious beliefs of Muslims. Thereextremely difficult and poses a significant hurdle to engaging in the conduct inwhether conduct 'incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'. xxiwas a causal conduct in question (with the 20D."xiiaction of scorning or despising; the between his and his attitudevas a causal poses a significant (incites' for the purposes of the RRTA, the conduct must be assessed ('as a whole'. xxiwas a causal conduct in engaging in the (incites' for the purposes of the RRTA, the conduct must be assessed 'as a whole'. xxiwas a causal conduct in engaging in the (incites' for the engaging in the (incites' for the engaging in the (inter the conduct must be assessed 'as a whole'. xxiwas a causal conduct in engaging in the (inter the conduct worthes conduct in intention to incite)action of scorning or despising; the between his engaging in the which something conduct in intention to incite)and his attitudeThere wereIttle account. 2 and Kidd CJ didbeing held	reason of the	incite is	To determine	Muslims. <sup>xxviii</sup> There	(1993) as: 1 The	
Muslims. Theredifficult and'incites' for thewas a causalposes aposes aconnectionsignificantbetween hishurdle toengaging in theprosecutionsconduct inunder squestion (with the20D."xiiintention to incite)There wereand his attitudeThere were	religious beliefs of	extremely		was a causal	action of scorning	
was a causal connectionposes a significant hurdle to prosecutions conduct in under s question (with the intention to incite)purposes of the RRTA, the conduct must be assessed <b>'as a whole'</b> .xxibetween his engaging in the question (with the 20D."xiimental attitude in which something or someone is question (with the and his attitudewas a causal between hisposes a significant hurdle to must be assessed <b>'as a whole'</b> .xxibetween his engaging in the question (with the and his attitudemental attitude in which something or someone isintention to incite) and his attitudeThere wereprosecutions towards MuslimsThe condition of being held	Muslims. There	difficult and		connection	or despising; the	
connectionsignificant hurdle to engaging in the engaging in the or someone isRRTA, the conduct must be assessed 'as a whole'. xxiengaging in the conduct in question (with the and his attitudewhich something or someone is under s 20D."xiiconduct in question (with the and his attitude20D."xiiRRTA, the conduct must be assessed 'as a whole'. xxiengaging in the conduct in question (with the and his attitudewhich something or someone is worthless or of and his attitudeand his attitudeThere wereThere wereand Kidd CJ didbeing held	was a causal	poses a		between his	mental attitude in	
between hishurdle tomust be assessedconduct inor someone isengaging in theprosecutionsmust be assessedquestion (with theconsidered asconduct inunder sintention to incite)worthless or ofquestion (with the20D."xiiintention to incite)little account. 2intention to incite)There wereintention to incideThe condition of	connection	significant	• •	engaging in the	which something	
engaging in the conduct in question (with the intention to incite)prosecutions under s 20D."xii'as a whole'.xxiquestion (with the intention to incite)considered as worthless or of little account. 2 The condition of and his attitudeand his attitudeThere wereThere wereand Kidd CJ didbeing held	between his	hurdle to		conduct in	or someone is	
conduct in question (with the intention to incite)under s 20D."xiiintention to incite)worthless or of little account. 2intention to incite) and his attitudeThere wereIntention to incite)The condition of being held	engaging in the	prosecutions		question (with the	considered as	
intention to incite) and his attitudeThe condition of being held		under s	as a whole .	•	worthless or of	
intention to incite) and his attitudeThe condition of being held	guestion (with the	20D." <sup>xii</sup>			little account. 2	
and his attitude There were and Kidd CJ did being held						
	,	There were				
towards Muslims. <sup>v</sup>   submissions to the	towards Muslims. <sup>v</sup>	submissions to the		not have to decide	worthless or of	
Committee pointed "if motive must being despised;						
It was unnecessary out that there was always be dishonour,	It was unnecessary	•				
for Kidd CJ to uncertainty as to elementally disgrace 4 A	,			-		
decide if motive whether recklessness attributed to the scornful or		•		•	•	

must always be	may be a sufficient	perpetrator ur	nder disrespectful act;
elementally	mens rea and in	s 25(2)." <sup>xxix</sup>	esp. an act in
attributed to the	response to		contempt of a
perpetrator under	difficulties with		court of law. 5 An
s 25(2), because in	proving intent, a	Incite means	object of
this case it was	number of	ʻurges, spurs o	n, contempt." <sup>xli</sup>
made out. <sup>vi</sup>	participants	stirs up, anima	tes Revulsion is
	expressed the view	or stimulates',	or defined in the
'Class' is not	that s 20D of the Anti-	'encourage'. <sup>xxx</sup>	New Shorter
defined in the RRT	Discrimination Act	There can be r	o Oxford English
Act. The natural or	should include a mens	incitement in t	he Dictionary, Oxford
ordinary meaning	rea of recklessness. <sup>xiii</sup>	absence of an	University Press
of the phrase is		audience <sup>xxxi</sup> . W	/hile (1993) as: 3 A
that of a	Although the	actual incitem	ent sudden violent
'collection or	Committee suggested	is not required	change of feeling;
group of persons	legislative	here – intentio	on to a strong reaction
who are regarded	clarification, it	incite is sufficie	ent in taste;
as having certain	expressed the view	– an intent to	abhorrence,
common	that recklessness is a	incite could on	ily repugnance; a
attributes or	sufficient form of	be proved if th	
traits." <sup>vii</sup>	criminal intent for the	was an intende	ed loathing. <sup>xlii</sup>
	purposes of s 20D. <sup>xiv</sup>	audience. <sup>xxxii</sup>	Ridicule is defined
The RRT Act			in the New Shorter
contemplates that	This analysis would be	Section 25(2) of	loes Oxford English
a class of persons	applicable to the	not require the	at Dictionary, Oxford
may hold a	Victorian provisions.	the conduct	University Press
religious belief or		engaged in to	be (1993) as: 1 A
engage in religious		capable of inci	ting ridiculous or
activity.		the targeted	absurd thing,
		audience to th	e characteristic, or
		emotional	habit; an
Kidd CJ holds that		responses	absurdity. Now
"Muslims are		stipulated <sup>xxxiii</sup> .	rare. 2 Subjection

clearly a group of	Section 25(2) is to mocking and	
people having an	concerned with dismissive	
attribute in	the purported language or	
common, that is,	inciter's state of behaviour; the	
people who follow	mind or intention, action or practice	
or practice the	and not with the of ridiculing a	
	5	
religion of Islam.	consequential person or thing;	
They hold religious	impact (of the mockery, derision.	
beliefs and engage	conduct) upon the 3 Ridiculous	
in religious	target nature or	
activity." <sup>viii</sup>	audience. <sup>xxxiv</sup> character (of a	
	thing),	
	ridiculousness;	
	In <i>Cottrell</i> , Kidd CJ that which is	
	holds that in this ridiculous. 4 A	
	case in the piece of derisive	
	appellant's act in mirth or light	
	the mock- mockery. ridicule /	
	beheading scene v.t. Subject to	
	of the video, his ridicule or	
	acts "are mockery; make	
	deliberate and fun of, deride,	
	voluntary and that laugh at. Formerly	
	the appellant was also (rare), make	
	aware that his ridiculous. <sup>xiiii</sup>	
	participation was	
	being filmed."xxxv	
	He considers that	
	it is 'patently clear	
	that the function	
	of the video was	
	to drum up	

	support for the rally or protest. The mock- beheading video was purposeful. It was calculated to achieve a result. It was pre-meditated and involved a degree of planning. It was undertaken with serious intent. This is the important context to my other findings." xxxvi	
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

<sup>i</sup> Cottrell v Ross [2019] VCC 2142.

" Ibid, [48].

<sup>iii</sup> Ibid, [49].

<sup>iv</sup> Ibid, [51].

<sup>v</sup> Ibid, [63].

<sup>vi</sup> Ibid, [56].

<sup>vii</sup> Ibid, [40].

<sup>viii</sup> Ibid, [63].

<sup>ix</sup> Neil Rees, Simon Rice and Dominique Allen 'Australian anti-discrimination and equal opportunity law' (The Federation Press, 3<sup>rd</sup> ed, 2018), 742; citing *Veloskey v Karagiannakis* [2002] NSWADTAP 18, [22].

\* Racial Vilification and Racially Motivated Offences [2010] TASLRIIP 16, [3.2.4] (https://www.austlii.edu.au/cgi-

bin/viewdoc/au/other/lawreform/TASLRIIP/2010/16.html?context=1;query=%22Anti-Discrimination%20Act%201977%22%20and%20%22s%2020D%22;mask path=).

x<sup>i</sup> Standing Committee on Law and Justice, Report on Racial vilification law in NSW (NSW Legislative Council, Report 50, 2013)

(https://www.parliament.nsw.gov.au/lcdocs/inquiries/2260/Racial%20vilification%20law%20in%20New%20South%20Wales%20-%20Final.pdf), [4.88].

<sup>xii</sup> Ibid, [4.106].

<sup>xiii</sup> Ibid, [4.95]. <sup>xiv</sup> Ibid, [4.107]. <sup>xv</sup> Ibid, 743. xvi Catch the Fire Ministries Inc v Islamic Council of Victoria Inc [2006] VSCA 284, [14] (Nettle JA), [159] (Neave JA) ('Catch the Fire'). <sup>xvii</sup> Fletcher v Salvation Army [2005] VCAT 1523, [5]. <sup>xviii</sup> Rees et al (ix), 734. <sup>xix</sup> *Fletcher* (xvii) [5]. <sup>xx</sup> Rees et al (ix) 734. <sup>xxi</sup> Catch the Fire (nxvi) [79] (Nettle JA); [191]-[192] (Neave JA). <sup>xxii</sup> Rees et al (ix) 742. xxiii Ibid; citing Veloskey v Karagiannakis [2002] NSWADTAP 18, [22]. xxiv Cottrell (i) [47]. <sup>xxv</sup> Ibid, fn 37. <sup>xxvi</sup> Ibid. <sup>xxvii</sup> Ibid. <sup>xxviii</sup> Ibid, [56]. <sup>xxix</sup> Ibid, fn 37. <sup>xxx</sup> Ibid, [57]. <sup>xxxi</sup> Ibid. <sup>xxxii</sup> Ibid. <sup>xxxiii</sup> Ibid, [58]. xxxiv Ibid, [58]. <sup>xxxv</sup> Ibid, [311]. <sup>xxxvi</sup> Ibid, [322]. <sup>xxxvii</sup> Ibid, [36]. <sup>xxxviii</sup> Ibid. <sup>xxxix</sup> Ibid. <sup>×l</sup> Ibid, [37]. <sup>xli</sup> Ibid, fn 25. <sup>xlii</sup> Ibid, fn 26. <sup>xliii</sup> Ibid, fn 27. <sup>xliv</sup> Ibid, [40]. <sup>xlv</sup> Ibid, [63].